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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

LINEX TECHNOLOGIES	)	
	)	DOCKET NO. 2:07cv222
	)	
-vs-	)	
	)	Tyler, Texas
	)	1:30 p.m.
BELKIN INTERNATIONAL, ET AL	)	September 17, 2008

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE JOHN D. LOVE,  
UNITED STATES MAGISTRATE JUDGE

COURT REPORTER:	MS. SHEA SLOAN
	211 West Ferguson
	Tyler, Texas 75702
	903/590-1176

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## 1 SIGN-IN SHEET

2 PLAINTIFF ATTORNEYS REPRESENTING

3 ED GOLDSTEIN Linex

STEVE ABBOTT Linex

4 JOHNNY WARD Linex

CORBY VOWELL Linex

5

6 DEFENSE ATTORNEYS REPRESENTING

7 SAM BAXTER Cisco-Linksys

8 GARRET CHAMBERS Cisco-Linksys

DARRYL BURKE Cisco-Linksys

9

DAN CONRAD Dell, Inc.

10 DARREN P. MAREMISS Gateway, Inc. and Lenovo

11 ERIC FINDLAY Gateway, Inc. and Lenovo

12 ANDY STINSON Phoebe Micro

13 BRIAN RANGE Netgear

14 ROBERT MATTSON Buffalo

BILL CORNELIUS Buffalo

15

IRFAN LATEEF Toshiba America

16 CHERYL BURGESS Toshiba America

MELVIN WILCOX Toshiba America

17 TREY YARBROUGH Toshiba America and Belkin

18

\*\*\*\*\*

19 ALSO PRESENT: JOE GARODNICK - LINEX CORPORATE REP. AND  
AFFIANT

20 MARK MICHELS - CISCO IN-HOUSE COUNSEL

21

22

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 Ms. Morris, you may call the case.

4 THE CLERK: The Court calls Case No. 2:07cv222,  
5 Linex Technologies v. Belkin International, et al.

6 THE COURT: Announcements.

7 MR. GOLDSTEIN: Your Honor, for plaintiff Ed  
8 Goldstein. With me are Johnny Ward, Ward & Smith; Corby  
9 Vowell and Steve Abbott of Goldstein Faucett and Prebeg, and  
10 we have brought Dr. Joe Garodnick, who is a principal at Linex  
11 and the affiant in this matter.

12 THE COURT: All right. Good morning. For the  
13 defendants?

14 MR. BAXTER: Good morning, Your Honor. Sam Baxter,  
15 McKool-Smith. I have with me Garret Chambers and Darryl Burke  
16 and from Cisco, Mr. Mark Michels back in the courtroom. We  
17 are ready.

18 THE COURT: All right.

19 MR. CONRAD: Good morning, Your Honor, Dan Conrad  
20 from Jones Day. I am here for Dell, Inc.

21 THE COURT: Okay.

22 MR. FINDLAY: Okay. Good morning, Your Honor, Eric  
23 Findlay for Gateway and Lenovo and also with me is Darren  
24 Maremiss from Dechert in Austin.

25 THE COURT: Okay.

1               MR. STINSON: Your Honor, Andy Stinson here for  
2 Phoebe Micro.

3               MR. RANGE: Good morning, Your Honor. Brian Range  
4 here for Netgear.

5               MR. CORNELIUS: Good morning, Your Honor, Bill  
6 Cornelius and Robert Mattson for Buffalo Technology.

7               MR. MATTSON: Good morning.

8               THE COURT: Good morning.

9               MR. YARBROUGH: Your Honor, Trey Yarbrough for  
10 Belkin and D-Link; and myself, Trip Wilcox, Irfan Lateef and  
11 Cheryl Burgess for Toshiba.

12              THE COURT: Good morning. All right. Everybody  
13 made their announcements? Full house today. All right.  
14 Well, we are here on this motion to compel infringement  
15 contentions. Let me go ahead and ask the defendants if they  
16 would take up their motion. Of course, I have read the  
17 material, seen the affidavits, so, you know, I would just urge  
18 everyone to get to their points and not go -- I don't think it  
19 is necessary to go too much into the background or the  
20 technology, although I think that would be helpful to some  
21 degree. I will have questions for you as we go. Let me just  
22 go ahead and hear -- I guess -- who will be arguing the  
23 defendants' motion.

24              MR. BAXTER: Your Honor, Mr. Burke is going to argue  
25 collectively for the group.

1 THE COURT: All right.

2 MR. BAXTER: Some others may want to chime in later,  
3 but I think he is going to take the lead.

4 THE COURT: All right. Mr. Burke, why don't you go  
5 ahead.

6 MR. BURKE: Thank you, Your Honor. May it please  
7 the Court. Again, I am Darryl Burke. I am here for all of  
8 the defendants in this case. Right off the bat I want to  
9 answer the question why we are here today. We are here today  
10 to ask for you to strike the infringement contentions of the  
11 plaintiff in this case. We recognize this is an extraordinary  
12 form of relief. In this case I think our briefs are plain,  
13 and I am happy to talk about them today, and we think it is  
14 more than appropriate in this case.

15 One thing I have learned about practicing law here  
16 in the Eastern District for more than 10 years is that the  
17 rules mean things. That the rules in the district in general  
18 puts a high premium on preparedness, particularly on the  
19 plaintiffs but also on the defendants -- on both parties  
20 really to not play any games so the issues can be arrived upon  
21 so the parties can prepare their case so they can reach a  
22 settlement if that needs to be or at least reduce the cases or  
23 the issues that need to be decided for the Court.

24 In this case it just once again with regard to the  
25 rules I think it is important to focus on the rules at issue.

1 We are talking about I would say 3-1 infringement contentions.  
2 I was reading this last night again. It is (b), (c) and (d)  
3 of that rule. I was kind of struck how many times in this  
4 rule that the word "each" is used. For instance, if you use  
5 3-1(b) the rule says, "Separately for each asserted claim,  
6 each accused apparatus, product, device, process, method, act,  
7 or other instrumentality of each opposing party of which the  
8 party is aware. This indication shall be as specific as  
9 possible. Each product, device, or apparatus must be  
10 identified with the name or model number if known. Each  
11 method or process must be identified by the name, if known, or  
12 any product, device, or apparatus which, when used, allegedly  
13 results in the practice of the claimed invention.

14 (c) again mentions the word "each" four more times.  
15 In fact in there if you ask for a chart identifying  
16 specifically, specifically where each element of each  
17 asserted claim is found within each accused instrumentality.  
18 It goes on to say with respect to each element that the party  
19 contends in 112(6) you have to identify the structures, the  
20 materials that perform the claim function.

21 (d), which I won't read again speaks about the  
22 doctrine of equivalents. It mentions the word "each" again.

23 In this case the charts that the plaintiffs served  
24 over six months ago, you know, basically they sued just as a  
25 background -- this is an industry lawsuit. They have sued ten

1 defendants. They have sued an entire industry for violation  
2 of this '322 patent, and they have identified I think 68  
3 different products.

4 In their infringement contentions that they gave us  
5 they essentially gave all ten of us the exact same chart. In  
6 fact, it has the exact same typo in the chart. It is only a  
7 matter -- I think I have the one for Cisco in my hands here.  
8 It is less than ten pages, the entire contention. If you look  
9 at the chart for any one claim of the four they have asserted,  
10 I mean it is at most two pages, two pages in length.

11 Now, there is no supporting materials. There is no  
12 reference materials. There is no explanation. They don't  
13 even bother to tell us which generic product or which  
14 exemplary product this chart is based upon. And this is  
15 important, Your Honor, because in this case they have sued a  
16 whole variety of products. They have sued -- they have sued  
17 PC manufacturers, laptops, the desktops, they have sued router  
18 manufacturers. They have identified the product numbers of  
19 routers, of PC cards, of adapters. That is at least five  
20 different categories of products.

21 Some of the products comply with this 802.11n  
22 standard. Some do not, which I am not sure at the point they  
23 fully appreciated when they identified the list. There are no  
24 pictures. There are no block diagrams. Even the most  
25 simplest of elements and with the antennas -- which we are not

1 disputing that there are not antennas in these wireless  
2 devices; but they don't even bother to explain or identify  
3 where the antennas are found or which ones are at issue. That  
4 is important for some of the defendants because not all of the  
5 antennas may be used all of the time.

6 If I might, I don't know if I can be granted  
7 permission to show you, I don't know if you have seen one of  
8 these products. If I can approach, I would like to show you.

9 THE COURT: All right.

10 MR. BURKE: This is a router, Cisco router, one of  
11 the accused products. I'm sure the number is on here, but it  
12 says on the back of this. Any objection?

13 MR. GOLDSTEIN: No.

14 MR. BURKE: Here is the box of materials. In fact,  
15 I have gone ahead and taken the liberty.

16 (Exemplar given to the Court.)

17 There are four screws that were required to open up  
18 that particular router device. As you can see from what is  
19 there and what is evident on that router device is a printed  
20 circuit board, which is the green part and then there is a  
21 whole series of microchips, the bigger square boxes and black  
22 boxes there and a whole bunch of other electrical components.  
23 The point that is interesting here a lot of the information  
24 they now claim that they need was all available to them had  
25 they bothered to go down to Best Buy or get on Amazon or go

1 down to Sam's and "bluelight special" and buy those products.  
2 That product there sells for about \$100. Some of the products  
3 are as cheap as forty or \$50. The laptops are \$500 or \$800.  
4 That said, they could have bought in this case every single  
5 one of the products that they have alleged infringe  
6 their patent for less than \$10,000, and I am including sales  
7 tax in there.

8           This particular invention isn't an oil and gas  
9 invention that is buried down in the ground somewhere. It is  
10 not in the cockpit of a 747 or on a battleship. It is not a  
11 million dollar piece of equipment they don't have  
12 ready access to. This is something they could buy down at  
13 Best Buy. From that information there having done a whole  
14 bunch of infringement contentions in my life, you know, what  
15 you do when you do these kind of things is you go down to the  
16 store, you buy the device, you take it apart, you look at  
17 the chip numbers that are there, then you go to chip numbers  
18 and go to the website.

19           For instance, those that are right there on  
20 that device, I think are Broadcom or two or three of the  
21 chips. I believe there is an EON and others. You go to the  
22 website and you type the number of the chips on the website,  
23 you can pull up whatever technical information exists. I will  
24 be honest with Your Honor, some of these websites have more  
25 technical information than others. They used to have very

1 complex data sheets. Now they tend to be a little bit  
2 shorter. Other websites I noticed from reading the other  
3 defendants' affidavits actually have source code and a fair  
4 amount of detailed information.

5           You can go to the manufacturer or the branded  
6 provider of that. For instance, that is a Linksys product.  
7 You can go to the Linksys product and pull down the user  
8 manual. That is significant, Your Honor, because actually one  
9 of the features that you asked about in your order last week  
10 can be disabled and the user manual actually tells you how to  
11 go ahead and do that.

12           From that information you can construct some sort of  
13 contention, some sort of presentation. In this case they have  
14 run after they have asserted these infringement contentions,  
15 and I note just for completeness the only time they mentioned  
16 802 -- IEEE 802.11n standard is really as an adjective. Your  
17 know, it is an 802.11n transmitter, you know, these kind of  
18 uses. They did not in their original infringement contentions  
19 cite the standard at all in terms of the device and the  
20 specification by section number by page number, by figure.  
21 They didn't give us their version, they didn't give us the  
22 release, or any of that. I have actually a copy. I mean,  
23 this is the standard, double-sided. It is over 500 pages  
24 long. As I think you can tell even they admitted in Mr.  
25 Garodnick's affidavit there is at least 40 or 50 different

1 possible, you know, variances in the configurations. We think  
2 the number is much, much higher.

3 After we started discussing this issue and then in  
4 their brief they have now narrowed it down to at least ten  
5 pages, Your Honor, but they still at this late date, six  
6 months after they were supposed to provide this information, a  
7 year and a half after they sued, they still haven't provided a  
8 detailed explanation of how any part of these ten pages  
9 satisfy the claim limitations. That is particularly  
10 interesting. We don't think they can. The reason we don't  
11 think they can is because, as we have said and now given you a  
12 sworn affidavit to support, this doesn't speak to the received  
13 portion of wireless systems. Whatever it does say about the  
14 received portion isn't relevant to the claimed invention.

15 Even the chart that they put in their brief, I might  
16 add, which was not in their original contention that is shown  
17 here is a Figure N-64 is a transmitter block diagram. There  
18 is no corresponding receiver block diagram. That is important  
19 because if you look at the claims in their claims, all of them  
20 they have received elements --

21 Strike that.

22 They have transmit elements that transmit a signal  
23 that are received by another device, you know, after bouncing  
24 around the air a little bit. So you have three of the  
25 elements, you know, are transmit related and three of the

1 elements are received. What do you do after you get -- after  
2 the receiver receives that device? What is interesting is the  
3 device that you have there only does one of those things at a  
4 time. So if that device that is on your desk up there on the  
5 Bench is talking to a laptop, that is transmitting the signal  
6 and it is being received over here by one of the laptops, one  
7 of the cards inside one of the laptops. Then in turn that  
8 laptop is retransmitting a different signal back to the  
9 router, which is a receive device.

10           So the claims require both halves together, and they  
11 haven't even rebutted that argument. Yet they have accused  
12 all these products at best at any one time only do half, half  
13 of the claimed invention. So we think that they have fallen  
14 short in that way as well. It is particularly troubling, Your  
15 Honor, in view of the interrogatory that we asked them very  
16 early on in this case, we asked them -- defendants' interrog  
17 12, Interrogatory No. 12 we asked Linex, "To describe the  
18 testing, the reverse engineering, or analysis of any accused  
19 products and describe the results."

20           Now, in response Linex admitted -- and I am reading  
21 now directly from their answer. "Linex did not reverse  
22 engineer any of the accused products period. Rather, Linex  
23 based its decision to bring this lawsuit after consulting with  
24 counsel, following the review of defendants' product  
25 literature and data sheets related to the defendant's products

1     that state explicitly that such products use MIMO technology  
2     or operate in compliance with the IEEE draft 802.11n standard.  
3     It was evident from the defendants' representations within  
4     these materials that the defendants infringed the '322 patent.  
5     Additionally, we became aware of defendants' involvement in  
6     selling --

7             THE COURT:   Mr. Burke.

8             MR. BURKE:   -- the --

9             THE COURT:   Mr. Burke.

10            MR. BURKE:   -- deploying products.

11            THE COURT:   Mr. Burke, you are going real fast.

12            MR. BURKE:   I'm sorry.  I get -- I get kind of  
13     excited here this morning.

14            THE COURT:   The court reporter may --

15            MR. BURKE:   Appreciate --

16            THE COURT:   -- appreciate a little bit slowing down.

17            MR. BURKE:   I appreciate the breath.

18            THE COURT:   Yes, good for you, too.

19            MR. BURKE:   "Additionally, Linex became aware of  
20     defendants' involvement in selling and deploying products  
21     implementing the IEEE draft 802.11n standard, or otherwise  
22     utilizing MIMO technology, and their infringing conduct."  
23     This is it over here.  "After researching and reviewing the  
24     defendants' websites and various trade journals."

25            So we know from Linex's answers to our interrogatory

1 if they did buy a product they never reversed a single  
2 product. They have sued the entire industry 68-plus products  
3 and they didn't buy a \$100 piece of product and didn't take it  
4 apart and didn't test it and didn't do what I have just done,  
5 you know, given it to you and taken it apart.

6 THE COURT: What they are going to say is, I think  
7 in part, the plaintiff is going to say -- you know this -- is,  
8 well, we need the software, we need the internal workings. I  
9 mean, you know, we look at this and it is what it is. But  
10 that is not going to give us the answer that we need to  
11 provide you, so we need your proprietary information, your  
12 software. And that is where -- I think in part where they are  
13 coming from. How do you respond to that?

14 MR. BURKE: Two responses. One, is they have not  
15 made it very easy for us to even request that software. Most  
16 of -- as we understand the case this is really wrapped up in  
17 the chips, those little black -- in the circuit board. We I  
18 think collectively here we either buy those directly or  
19 indirectly from a number of manufacturers. In fact, we have  
20 identified that to them. It is kind of a secret that is  
21 hidden out in plain view because all they had to do was buy 68  
22 products and they could've figured out who all the chip  
23 manufacturers are. They can go to the websites and figure out  
24 what those chips do.

25 So one is -- at least when they do one of these

1 infringement charts, again having done several of these, they  
2 need to go through and explain what component, what subsystem  
3 within each accused device performs the recited limitation.  
4 It may be one chip, it may be more than one chip. Right now  
5 based upon what we have, we don't know. And this makes it  
6 very difficult for us for a number of reasons. Let me  
7 explain. You know, one, is if you go back to the chip  
8 manufacturers as we have and said, you know, we think that we  
9 have been sued because of this -- because your chips are doing  
10 something wrong. And they say -- they name our chips in the  
11 infringement contentions. No. Well, come back to us when  
12 they have. So they haven't made it very easy for us to get to  
13 the bottom of this on our side. We don't even know as we sit  
14 here right now what chip manufacturers to go talk to. They  
15 haven't taken even an exemplary product and diagramed it. So  
16 it makes it difficult for us to get our arms around this case.

17           Let me throw you another example. I believe -- and  
18 we have answered this in our interrogatories. There are seven  
19 different manufacturers of chips or chipsets at least. And we  
20 have told the plaintiff in this case that, I think, five or  
21 six months ago. Now, number one they haven't served a  
22 subpoena yet on any one of these manufacturers. Number two,  
23 there is at least if you think about it five potential  
24 design-arounds that they may exist right now on the table  
25 because even Dr. Garodnick admitted the standard doesn't speak

1 to the particular implementation. It only speaks to the  
2 functional definition of that black box. So the standard  
3 doesn't get them there.

4 But if I may drop back. If they say this is a  
5 standard case, then they at least need to explain why it is  
6 that the standard if followed, you know, the generic  
7 architecture that is in the contention, for instance, is  
8 utilized, how that infringes their patent. And where this is  
9 particularly of interest is OFDM and spread spectrum, which  
10 you have heard is two modulation schemes. The standard talks  
11 OFDM. The patent says spread spectrum. Now, I presume they  
12 are going to argue those are the same somehow. Both of those  
13 theories have been around for 20 or 30 years. It is in  
14 textbooks. I know one of them is in textbooks that the  
15 inventor has written.

16 They could at least explain generically why it is  
17 that OFDM theory of modulation satisfies the spread-spectrum  
18 theory of modulation. They didn't even have to go --  
19 ultimately they would have to go get the particular details,  
20 but at the early stage it was in textbooks. I don't know if I  
21 answered your question, I sure tried hard.

22 THE COURT: No, you did. Go ahead.

23 MR. BURKE: The last two points -- and I will be  
24 happy to let the defendants -- the plaintiffs speak. They  
25 haven't addressed this joint issue, joint direct infringement.

1 We have talked about do the two systems talk to each other at  
2 all. They seem to be oblivious to the point; therefore, they  
3 haven't reached the minimum requirements.

4 Second, they haven't laid out at all in their  
5 infringement contentions whatsoever, an indirect theory of  
6 infringement, either inducing infringement or contributing to  
7 the infringement of another. That hasn't even been put  
8 forth. So I don't see how they can now back up -- they  
9 haven't even responded to that in their brief. It seems to me  
10 at a minimum they have waived that.

11 On the doctrine of equivalents, which, again, the  
12 rules require them to come forward with that at the very  
13 beginning, all they said in the infringement contentions is  
14 that they asserted the claims were literally infringed; that  
15 they reserved the right to do that at a later point in time  
16 after the claim construction or after discovery litigation.  
17 Again, this is information they should have had at the very  
18 beginning of the case.

19 Now, one last point. If the rules mean things  
20 anywhere really, there needs to be -- they need to be  
21 followed. There needs to be a consequence for not following  
22 them. They need to have teeth. And the problem we have at  
23 this late juncture -- I mean our claim construction terms need  
24 to be exchanged next Friday. We have been forced to go  
25 through this process in the dark. We have been in that way

1 prejudiced severely.

2 THE COURT: Let me ask just a practical point here,  
3 and we will get -- I want to get into this with the  
4 plaintiffs. But, you know, you talk about -- I understand you  
5 are moving to strike their contentions.

6 MR. BURKE: Yes, Your Honor.

7 THE COURT: But is there something to be said for  
8 the idea that the plaintiff is -- they provided their  
9 contentions to you -- now, I don't know what they are going to  
10 say whether they are going to say they need this or they need  
11 that and we will see about that. Let's say that is what their  
12 contentions are. Would there be something to be said for,  
13 okay, fine, that is what your contentions are. We are going  
14 to file a motion for summary judgment, we are going to get our  
15 experts to look at these and put our reports together and we  
16 are going to file a motion that is going to explain the things  
17 which you have just explained to me, how these contentions are  
18 in your mind wholly deficient. And presumably the plaintiff  
19 would be stuck with what they have -- that is their case.

20 So what would your position be on that? I  
21 realize -- let's say the Court disagrees that striking their  
22 contentions is not the appropriate way to go here. What would  
23 your position be with regard to that alternative?

24 MR. BURKE: What I am afraid what would happen if we  
25 were to file a motion for summary judgment is we hear much of

1    what we have already heard, this is premature and this is  
2    early and we haven't taken discovery in this case and they  
3    will get our position and that is all done and they get our  
4    expert report.

5               THE COURT:   Let's assume we go through discovery.

6               MR. BURKE:   And we go all the way through the  
7    discovery and we have the expert reports, the problem we have  
8    is, honestly, we are having difficulty responding to the  
9    allegation in the first place for all of the reasons that I  
10   have mentioned, the chip guys were not responsive or not  
11   helping.  We don't understand how OFDM and spread spectrum is  
12   the same thing.  We have the Markman coming up.  We at least  
13   need to have their allegations.

14              So I would argue that the rules kind of lay this out  
15   in such a way -- they initiated this lawsuit.  They had all of  
16   the time in the world to put their case together.  They had  
17   another nine months after that, you know, to prepare their  
18   formal infringement contentions.  I mean, they should have  
19   gone first.  They should have had their ducks in a row and  
20   should have done that.  I am afraid, honestly, Your Honor, in  
21   direct answer to your question if we do a summary judgment it  
22   just kind of moves the ball further down the field without  
23   ending this and it costs more money and takes up more time and  
24   more resources and more distraction to our plaintiff -- I'm  
25   sorry to our clients.  So I hope I have answered that.

1 THE COURT: Oh, you have. Okay. Thank you.

2 All right. Let me hear from the plaintiff.

3 MR. VOWELL: Good morning, Your Honor. Corby  
4 Vowell on behalf of Linex Technologies. I just want to start  
5 by saying that on behalf of the plaintiff we take the rules  
6 very seriously. Our firm represents many plaintiffs in this  
7 district. We have been litigating in this district for quite  
8 a while and we are well aware of the rules themselves and we  
9 take them very seriously, and we did in this case as well.

10 Many of the issues that have been raised today, and  
11 I think, Your Honor, is actually kind of heading this  
12 direction, but many of these issues that are raised are more  
13 like infringement issues than they are issues about whether or  
14 not the infringement contentions themselves are sufficient.  
15 They are trying to raise noninfringement issues at this point  
16 and get into those issues even before claim construction.

17 But let me back up a minute and talk about the  
18 infringement contentions. The plaintiff in this case, we have  
19 looked at all of the publicly-available information that we  
20 could get our hands on and made a determination as to what was  
21 the most reliable information that we could look at, analyze,  
22 and then base our infringement contentions. And in this  
23 particular case that is the 802.11n standard that has been  
24 described ad nauseam in the papers and in the affidavits as  
25 well.

1           If you look at our infringement contentions, you  
2 will see that there are numerous references to the standard  
3 itself. The contentions are clear that the standard is the  
4 basis for those contentions. And the fact that the defendants  
5 are now claiming they know nothing about our infringement  
6 contentions is just -- I don't know what to say about that.  
7 They clearly know what we are accusing of infringement. It is  
8 the chips in each of these products that perform the functions  
9 according to that standard. That is where we started, and  
10 that is where we are now. It was clear from the beginning.

11           One of the things that I would like to point out is  
12 we have reviewed most of the information -- prior to filing  
13 suit we reviewed most of the information that the defendants  
14 attached to their affidavits, including the data sheets that  
15 were attached. The issue is that if you break open that  
16 product, you figure out what chipset is there, and then you go  
17 to the data sheet for that chipset. I will give you as an  
18 example Exhibit C to the declaration. I forget -- it was the  
19 expert opining on behalf of Cisco.

20           The first page is the intensified product brief by  
21 Broadcom. On the second page of that data sheet is a block  
22 diagram of that chipset. The problem is -- and we looked at  
23 this information ahead of time and determined whether or not  
24 that was enough. And we said that is not enough. That is not  
25 enough information on that data sheet. So we have got to go

1 look somewhere else because -- I have highlighted here and I  
2 would be happy to bring this up to you. But there is a few  
3 particular blocks in that diagram that perform the functions  
4 that are recited in the standard. But the document itself,  
5 the data sheet itself, does not go into those features or  
6 functions. It does not describe how those functions are  
7 performed. The standard itself addresses those.

8           So even if we break open all of the products -- we  
9 know this beforehand -- there is a reason why we didn't go  
10 through that exercise because we would get to the same point.  
11 We would get to the same point, which is we need to know what  
12 is in those specific chips, the hardware that is used, if  
13 there is any software used we need to know that. And the best  
14 source for understanding that, absent the proprietary  
15 documents of the chipset manufacturers is the standard itself,  
16 so that is where we start. I think it is clear if you look at  
17 our contentions and if you read the briefing in light of the  
18 briefing by the parties, it is clear that both sides know what  
19 we are contending meets each element of the claims based on  
20 the standard. We cited to -- even though we did not in our  
21 original contentions cite to specific pages of the standard,  
22 we did that in a follow-up letter in an effort to try to move  
23 things along and not burden this Court with motion practice.

24           Beyond that, we have said on numerous occasions and  
25 in writing submitted to the Court that we would -- although we

1    don't think it is necessary -- we would amend our contentions  
2    once we get through the proprietary information and get access  
3    to the proprietary information for each of these chipsets. We  
4    are still willing to do that, although we don't think it is  
5    necessary.

6                So we are doing everything we can to try to prevent  
7    taking up resources from the Court or bothering the Court with  
8    discovery issues that we are pursuing on our own. So with  
9    regard to issues like the receiver portion, this is something  
10   that the defendants have raised a number of times in a number  
11   of different ways. The standard itself does address quite  
12   clearly the signals that are transmitted, and it provides at  
13   least a guideline architecture but it describes the functions  
14   that have to be performed in order to transmit those signals.

15               As one of ordinary skill in the art knows, you have  
16   to be able to receive and process those symbols. You can't  
17   just build any receiver you want. You have to know what the  
18   transmitter does, how it is composed, and you have to know how  
19   the signals are comprised in order to receive those and  
20   process those and understand them and generate the original  
21   signal back. So this issue of, well, the standard does not  
22   even address the receiver is just false. I mean, it addresses  
23   the receiver by explaining exactly mathematically how the  
24   signal has to be formed so that everybody in the industry can  
25   build it and they can build it however they want. But it is

1 going to have to have the basic functional components  
2 necessary to reverse the process that was done at the  
3 transmitter. It is very clear what that process is. And to  
4 say that they don't have any idea what that -- you know, what  
5 we are accusing of infringement just doesn't make sense.

6 THE COURT: Well -- okay. Let me ask this: So is  
7 it the plaintiffs' contention that their infringement  
8 contentions are sufficient as they stand right now?

9 MR. VOWELL: Yes, it is.

10 THE COURT: Okay. So your position would be that  
11 you -- in order to provide sufficient infringement  
12 contentions, you don't need the proprietary software, firmware  
13 information? In other words, you don't need how these chips  
14 operate say in this router that has been presented here this  
15 morning? You don't need that information is your position?

16 MR. VOWELL: To establish infringement at trial we  
17 would like to look at information. However, for the purposes  
18 of providing infringement contentions, putting them on notice  
19 of our theories of infringement and showing that the claim  
20 elements are met by the accused products, we do not need that  
21 information. The standard provides enough information for us  
22 to understand how their products operate.

23 Now, you know, proving that at trial and  
24 establishing going through each product at trial sufficient  
25 for expert reports and at trial is a different matter, but we

1 believe that the information we provided is sufficient for our  
2 infringement contentions.

3 THE COURT: Well, let me take, for example, this  
4 router that has been presented to me this morning. It has a  
5 number of chips within it. So your position would be that  
6 looking at this particular router, for example, and pointing  
7 to particular chips that you claim perform particular  
8 functions, that would not be necessary here?

9 MR. VOWELL: We think that the infringement  
10 contentions are clear; that it points out that the products  
11 themselves have those functions in them; and whether we cite  
12 to a specific product number or not, we don't believe that is  
13 necessary to put them on notice of what we believe infringes  
14 because we have specified that it is the portion of the  
15 product that complies with the standard, and they are aware of  
16 what portion of the product that is.

17 THE COURT: Well, I think one of their arguments is  
18 that, you know, this standard, while the product you may be  
19 addressing complies with the standard, that in their mind does  
20 not answer the question of how the product, what it matches up  
21 with within the claim. You know, I think you have accused a  
22 number of different products. And I am concerned that you  
23 have not specified what -- how the product performs the  
24 particular function -- or within the particular claim element  
25 that is being addressed. I am just not sure I am seeing that.

1           MR. VOWELL: Okay. I think one of the things that  
2 is important to understand here is that the claims do not  
3 address all of the internal details and specific parts that  
4 would be resident in the implementation. The claims are  
5 directed at sort of the overall functions that are performed,  
6 and those functions are described in the standard. So the  
7 claim elements, for example, demultiplexing is one element  
8 that is in each of the asserted claims. And the accused  
9 products -- the standard itself describes this process of  
10 demultiplexing an incoming stream into multiple spatial  
11 streams. So we have identified -- and that is just one  
12 example. I could go claim element by claim element, but that  
13 is one example where the standard itself describes taking an  
14 incoming signal, breaking it down into multiple spatial  
15 streams, and we have cited that as support for meeting a  
16 particular claim element, namely the demultiplexing function.

17           THE COURT: Well, I am a little bit concerned, Mr.  
18 Vowell, about the position that you appear to be taking  
19 that -- I certainly don't -- I am not saying that the  
20 infringement contentions need to provide every bit of  
21 information, establish your case for infringement, you know,  
22 that kind of thing. But at the same time it concerns me that  
23 you are saying that there is information there that we are  
24 going to need to use at trial; but for the purposes of the  
25 infringement contentions with all of these defendants and all

1   these particular products, that we don't need to be more  
2   specific and specify -- for example, the "n" standard I think  
3   which is conceded by the plaintiff that provides for a number  
4   of different configurations and modes and it has certain, for  
5   lack of a better way of putting it, baseline characteristics  
6   that an "n" compliant product would have. But there are a  
7   number of different ways to do that. So it just concerns me  
8   that you are, you know, saying we are going to need all this  
9   information but we don't need it now and we can provide sort  
10   of a much less specific contention than you are going to need  
11   at trial.

12               MR. VOWELL: I guess maybe to state that better is  
13   that the information that we are seeking discovery is really  
14   to confirm what we already believe and know has happened. So  
15   I don't know that it is additional information that is  
16   necessary to prove infringement. I guess the better way to  
17   state it is it is to confirm what we believe and how we  
18   believe these products meet the standard. I think that is the  
19   better way to phrase it, so certainly we believe that by  
20   operating according to the standard, they do infringe.

21               And we understand that the standard -- we are not  
22   looking at the standard in a vacuum. There are a number of  
23   different modes and possible configurations for a product that  
24   is compliant with the standard. And some of those will be  
25   relevant to the claims, some of those are not relevant to the

1 claims. The product may implement some features that are not  
2 relevant to the claims. And we are sort of not addressing  
3 that at this point. But it is clear to us not only from the  
4 standard, but the fact that each of these defendants has gone  
5 out to an independent third party, the Wi-Fi Alliance and  
6 sought certification not just of the standard itself but of  
7 these modes of operation that infringe the claims, we have  
8 confirmed that and understand that they do work in accordance  
9 with the claims. And we have described that in our  
10 contentions.

11 I mean, again, we are certainly willing to amend,  
12 although we think that our infringement contentions are  
13 sufficient, we are willing to amend and include certain  
14 information that comes from the proprietary information either  
15 of the defendants or of third parties.

16 THE COURT: Let me ask this: I think that you have  
17 accused some products which are non-"n"-standard compliant, in  
18 other words they don't comply with the "n" standard, they  
19 comply with another standard. Is that right?

20 MR. VOWELL: I don't know that they -- they may  
21 comply with other standards but in terms of the infringing  
22 technology, the MIMO technology that they incorporate, I don't  
23 believe that that adheres to any other particular standard, at  
24 least the MIMO portion. So we studied -- in those particular  
25 cases -- and most of these are products that either pre-dated

1 the standard by -- pre-dated a draft of the standard by a  
2 certain time period or were available -- some of them are  
3 still available now, but the 802.11n products are quickly  
4 replacing them.

5 But nonetheless, we studied the publicly-available  
6 literature on those and the descriptions available with those  
7 products and they tracked what was going on in the standard,  
8 at least at the level we are talking about. Again, there may  
9 be other specific implementation details that are different  
10 between those products and the products that comply with the  
11 standard. But at least as to the elements of the claims the  
12 information that is available publicly about those products  
13 indicates that they work the same way that the products which  
14 comply to the standard do.

15 THE COURT: Okay. Explain to me -- you mentioned  
16 the MIMO technology. Now, how does that fit into what is  
17 claimed here in the case, in the patent?

18 MR. VOWELL: Okay. Some background. The MIMO  
19 technology has -- for many years there have been instances  
20 where you try to use multiple antennas and other kinds of  
21 things, either add a transmitter or add a receiver, not  
22 necessarily together to try to improve the efficiency of  
23 communications over a particular channel. And there is -- as  
24 Mr. Garodnick here can attest to, there are -- there is an  
25 enormous amount of work that has gone into how can you improve

1 the efficiencies of wireless communications? This particular  
2 technology, which is in its most recent form has been adopted  
3 by the standard, involves taking information on the  
4 transmission side so the digital signal that is coming in that  
5 you want to transmit, breaking it down into multiple spatial  
6 streams and then processing that information through a number  
7 of things, encoding it basically and spreading that data and  
8 then transmitting it over multiple antennas. And the idea  
9 here is to take advantage of what are called multipath  
10 effects. I don't want to get too much into the details here.

11 But the basic idea is that the signals that are  
12 transmitted bounce off walls, buildings, other things like  
13 that; and then at the receiver end you have multiple antennas  
14 that receive those signals and then combine them all back  
15 together, demodulate, despread the signals that are coming in,  
16 and then combine them back together into the original signal.  
17 And for reasons we won't get into here there is an efficiency  
18 here that enables a much higher through-put when you break the  
19 data down into multiple spatial streams and transmit them and  
20 receive them over multiple antennas.

21 THE COURT: Okay. So I guess my question is, does  
22 the patent teach MIMO technology?

23 MR. VOWELL: Yes, it does.

24 THE COURT: Okay. Now, do the "n" devices accused  
25 here utilize MIMO technology?

1 MR. VOWELL: Yes, they do.

2 THE COURT: All right. Now, we talked about this a  
3 second ago, but the noncompliant products, the non-"n"-  
4 compliant products I guess you say they really are -- I guess  
5 what we are trying to get a handle on here is there are "n"  
6 standard products that appear and then are they all "n"  
7 standard products is what it boils down to that you have  
8 accused in the case.

9 MR. VOWELL: Well, they are not official "n"  
10 standard products I guess is the way to put it.

11 THE COURT: Okay.

12 MR. VOWELL: We believe -- again, at least at the  
13 level the claims describe we believe they work the same way  
14 because that is what their literature shows.

15 THE COURT: Okay.

16 MR. VOWELL: There are going to be implementation  
17 differences between those products and the "n" compliant  
18 products.

19 THE COURT: Okay. All right. Anything else?

20 MR. VOWELL: I think that is it at this time.

21 THE COURT: Okay. Let me have the defendant  
22 respond, and I may want to hear again from you, Mr. Vowell.

23 MR. BURKE: A couple of points let's -- you asked a  
24 couple of good questions, various questions regarding the  
25 nature of these products, Your Honor. I think it is important

1 to recognize these products are largely backwardly compatible  
2 with all of the earlier standards. So just because a product  
3 up there says it complies with draft "n" it also complies with  
4 the earlier versions of the 802.11n. So that would be like  
5 "g" and "e" and et cetera.

6           So even though there may be a capability for a  
7 device -- one of the accused products to work in that  
8 particular mode, it may never actually be turned on by the  
9 consumer. And largely that is not so much a function of what  
10 the consumer does. It is a function of what other system  
11 wants to talk, for instance, to that router. So if you buy  
12 one of those and you take it home -- which I actually did last  
13 two weeks for my daughter and you plug it in and you want it  
14 to take to a laptop, if the laptop is not an "n" compliant  
15 card, that router will never talk to that laptop in the "n"  
16 mode. It will only talk to it in the "g" mode and or the  
17 earlier modes.

18           So a lot of this is a function of how old the  
19 devices are, how well it is working, et cetera. The "n"  
20 standard is particularly acute here because it is still in  
21 some flux, it is still in draft form. It has been going on  
22 for almost four years now. There are lots of things in this  
23 500 pages, as Dr. Negus explained last week. Some of it has  
24 to deal with the MIMO stuff, but a lot of it has to do with  
25 redesigning or suggesting other changes, you know, to stuff

1 that doesn't relate here. So that is where if you look at the  
2 answers of the two affidavits, Dr. Negus and Dr. Garodnick,  
3 there was a disagreement about some features but they were  
4 optional required.

5 As I understand the way the standard bodies work, if  
6 it is not spelled out exactly, you know, that thou shall do  
7 this, it is optional. And if it is not mentioned, it is  
8 optional. You have to have, as I understand it, when these  
9 industry groups get together, 75 percent approval. So you can  
10 imagine all of the horse-trading that goes on in these  
11 standards committees to try to get something that 75 percent  
12 of the people agree with. It has changed four times just this  
13 year.

14 Now, with respect to the one statement that their  
15 expert Dr. Garodnick, who is sitting right here and also part  
16 owner of the company, said that actually our independent  
17 expert agreed with, is he said, "As in any standard the  
18 specific implementation of the hardware, software, or  
19 firmwares configurations in 802.11n is left to the designer."  
20 That is not --

21 THE COURT: Let me stop you. I think what I am  
22 going to need to do here is I need you to take a chart and  
23 show me, give me an example of what you are talking about. In  
24 other words, point to me where there is a claim element and  
25 they have accused the standard and how that is insufficient.

1 I feel like I am kind of groping around in the dark here. I  
2 think we need to get down to specifics. Show me some  
3 examples, and I want Mr. Vowell to respond.

4 MR. BURKE: Let me see if I can get my --

5 THE COURT: Okay.

6 MR. BURKE: Do you have a copy of the --

7 THE COURT: Well, I have a copy of -- you may have  
8 to give me a copy. I have, for example, in front of me I  
9 think Belkin's -- the chart provided to Belkin. But I'll look  
10 at any of them that you have got that you have a problem  
11 with.

12 MR. BURKE: Although I represent Cisco-Linksys and  
13 am most familiar with our products since you have a separate  
14 copy of the Belkin, let me use that. As I mentioned earlier,  
15 all of the charts are the same.

16 THE COURT: Okay.

17 MR. BURKE: So I don't think there are any big --  
18 any differences. As a quick review there are four claims in  
19 this case. Some are alleged to be process claims, some are  
20 system claims. The part that probably is most egregious --  
21 there is actually a couple of parts. Let me look at the Claim  
22 25, which is the apparatus claim. I'm blessed with a number  
23 of very smart co-Counsel that may have some better examples.  
24 But, for example, Claim 25, which is a process claim --

25 Strike that.

1           Part of the process claim. You have the elements  
2   here on the receive side. You have receiving the first  
3   spread-spectrum signal and the second spread-spectrum signal  
4   with a plurality of receiver antennas. And you have the next  
5   step which is the detection. So once the signal arrives at  
6   the antenna, it is detected and then there is actually two  
7   separate combining operations. Again, this is the receive  
8   side of the claim, and all they say, for instance, there --  
9   for instance, next to receiving is an 802.11n receiver. And  
10   they talk it has multiple antennas and the antennas are  
11   coupled to receive the chain and accordingly one of the  
12   multiple antennas receives each one of the multipath signals.

13           Now, I don't think they know that. In fact, if I  
14   am not mistaken one of the declarations of one of my brethren  
15   here actually pointed out one of the antennas is turned off in  
16   certain modes. If you look here at the next one, the  
17   detection part. There I don't know what this means, to be  
18   honest with you. They talk about a demapper. They talk about  
19   an Nss spatial stream, they talk about OFDM signals. I don't  
20   know where they pulled that from, Your Honor. I don't know if  
21   it is from a textbook. I don't know if it is from a technical  
22   article. I don't know. If it is from the standard, I don't  
23   know where in the standard or which version.

24           THE COURT: What products are we talking about  
25   here? What does Belkin make?

1                   MR. BURKE: Belkin makes routers, correct? Belkin's  
2 counsel?

3                   UNIDENTIFIED: Correct.

4                   MR. BURKE: They make routers just like Cisco does.  
5 But, again, they have the exact claim for the PC's. But the  
6 second part is that -- also there is a second part of  
7 combining. The reason I focused, Your Honor, on those is  
8 because those are the differences between the traditional  
9 spread-spectrum system and an OFDM system. We don't think  
10 they can map the two. I know they can't do it with regard to  
11 implementation details of the standard because it doesn't lay  
12 it out, so I don't see how they get close in the apparatus  
13 claim. But we don't think they can do it theoretically at  
14 this stage at all. That is an example. I am happy to --

15                  THE COURT: Okay. All right.

16                  MR. BURKE: I didn't know if you want to ping  
17 pong --

18                  THE COURT: Yeah. Let's go -- Mr. Vowell, respond  
19 to that. Tell me how you are accusing a Belkin router that  
20 this explains to them what you are saying is within the Belkin  
21 wireless product, this is how it infringes these elements.

22                  MR. VOWELL: Okay. So taking the specific example  
23 from Claim 25 here and the receiving element of the claims,  
24 receiving the first spread-spectrum signal and the second  
25 spread-spectrum signal with a plurality of receiver antennas.

1     So we have recited how the Belkin product works by saying that  
2     an 802.11n receiver includes multiple antennas, so 802.11n  
3     describes the modes of operation in which multiple antennas  
4     are used on the receiver.

5             THE COURT:   So you are saying in the receiving mode  
6     of this router -- an 802.11n receiver includes multiple  
7     antennas, so in the receiver mode of this router it includes  
8     multiple antennas?

9             MR. VOWELL:   Yes.

10            THE COURT:   Okay.

11            MR. VOWELL:   Let me back up for a minute and also  
12     mention that Belkin doesn't just make routers.   They make  
13     routers that are sort of like the axis point, if you will,  
14     that you would connect to with your laptop or whatever.   They  
15     also make wireless cards that are meant to communicate with  
16     the router.   So it is a card that would either be put into a  
17     laptop through one of the PCMCIA slots or would somehow be  
18     incorporated into a laptop or other client device.   So they  
19     make a router and they make a card that talk to each other.

20            So going further, we cite additional information  
21     here that says that each antenna is coupled to a receive  
22     chain.   Now, we understand that the standard does not  
23     explicitly say you have to have multiple receive chains.   It  
24     doesn't explicitly say that.   But, again, we are not looking  
25     at the standard in a vacuum.   We are looking at it in the eyes

1 of one of ordinary skill in the art that understands the  
2 standard and understands how the devices communicate using the  
3 standard. So each of those routers has multiple antennas and  
4 it has multiple receive chains to receive six spread-spectrum  
5 signals over each of those antennas. I'm happy to try to  
6 unpack that for you a little bit because I can see you  
7 scratching your head.

8 THE COURT: You are saying so the router has each  
9 antennas coupled to a receive chain and then each of the  
10 multiple antennas of the receiver receives each of these  
11 signals, including waveforms. So you are saying that within  
12 this -- are you saying all Belkin products that you have  
13 accused here, this is within each of those products and this  
14 is what you are saying infringes or matches up with the  
15 receiving mode, I guess, or receiving element of the claim?

16 MR. VOWELL: Yes, yes, Your Honor.

17 THE COURT: Okay. Mr. Burke, what is unclear about  
18 that?

19 MR. BURKE: With respect to the --

20 THE COURT: Mr. Burke, you stay at counsel table  
21 and, Mr. Vowell, you stay up there and we will go back and  
22 forth here.

23 MR. BURKE: I was actually looking at something  
24 else.

25 THE COURT: Remain standing, but just stand at

1 Counsel table.

2 MR. BURKE: Having something to put my papers on  
3 here.

4 THE COURT: I understand.

5 MR. BURKE: The problem that I have with this  
6 analysis is it is circular. I mean, we have a claim  
7 limitation, you know, speaking to receiver, and all he does  
8 over here on the right side is say 802.11n receiver and kind  
9 of regurgitates that part of the claim language and comes back  
10 around. So he is talking about those skilled in the art. I  
11 think there needs to be an explanation in detail why that is  
12 the case. In particular the first and second spread-spectrum  
13 signal. You know, with regard to Belkin, I mean, just to give  
14 you an example in the apparatus context, there are five  
15 different manufacturers, chip manufacturers and their  
16 products.

17 So I'm not sure as I sit here right now, Your Honor,  
18 he gave me an explanation, I don't know what product he is  
19 talking about. If I were representing Belkin today, I would  
20 not know what particular product he is saying is infringing  
21 this claim. He just mentioned adapters. Also Belkin makes  
22 routers like us. I don't know what chip is performing this  
23 step, and I don't have any materials supporting this. So I  
24 have nothing to go from except for him continuing to say they  
25 know, they know, they know.

1           THE COURT: Mr. Vowell, what would be wrong with  
2 product by product first of all, and second of all saying  
3 within Belkin product or Cisco product "X" the multiple  
4 antennas that are included in the "n" standard are found here,  
5 here, here, here, and here; then the chip that receives and  
6 processes the signals over the multiple paths and all that  
7 kind of stuff is found here, this is the chip we are talking  
8 about, what would be wrong with that?

9           MR. VOWELL: Well, the only concern I have is when  
10 you say "found here," that is the problem.

11          THE COURT: Okay.

12          MR. VOWELL: Again, we are talking about electronic  
13 circuitry and maybe in some cases software. Antennas  
14 obviously are hardware. To point out here, the particular  
15 device they handed you is sort of all in one device and the  
16 antennas are smaller. There are some devices you may have  
17 seen somewhere. I don't know if we put the picture in the  
18 briefing for you, but little multiple, you know, antennas  
19 about four or five inches long sticking out. So in those  
20 cases sure we can say here is the -- we can use a picture and  
21 a couple of arrows and point to the antennas.

22           The point is that the notion of "here" is a little  
23 more difficult in this context. In some cases for some of  
24 these elements, maybe not the receiver, but the demultiplexer,  
25 it goes back to that Exhibit B I mentioned earlier, and that

1 is to say here when you have got a chip that is implementing a  
2 number of functions and to point to the demultiplexer in  
3 there, you can't really point to it. It is physically there,  
4 but we don't have the documents or the level of specificity to  
5 be able to point to that. I mean, it just makes it very  
6 difficult.

7 THE COURT: Okay. Anything else?

8 MR. BURKE: Yes. Two points. It is very difficult  
9 if you don't try, if you don't gather and you don't do it.  
10 And there is no evidence that they have, indeed, tried. The  
11 second part as I was looking through this received part,  
12 again, the only time they use 802.11n, Your Honor, is as an  
13 adjective there of receiver. There is no identification of  
14 the specific subsection which -- of the alleged 802.11n  
15 receiver complies or doesn't, conforms to or doesn't, whether  
16 it is an optional feature or required feature. And even if  
17 they went that far, Your Honor, there is no explanation why a  
18 product that did it that way would satisfy the claim  
19 limitation because the specification is not going to use this  
20 type of language in it. So they need to actually connect the  
21 dots.

22 THE COURT: All right. What about the next one you  
23 pointed out? "Detecting at each receiver antenna of the  
24 plurality of receiver antennas," what about that one, what is  
25 wrong with that?

1           MR. BURKE: Well, again, Your Honor, they haven't --  
2 they have kind of thrown around some catch phrases like OFDM.  
3 They have provided a discussion that looks mathematical or  
4 somewhat detailed. I mean it is Nss spatial streams contain a  
5 first complex number stream. I mean, I would like to know  
6 where they have pulled this information from. Why do they  
7 think that?

8           They have at the bottom here a demapper, demap via a  
9 plurality of demappers. Now, I have asked our experts, I have  
10 asked our in-house people. Nobody seems to know exactly what  
11 a demapper is. More or less they haven't explained how a  
12 demapper satisfies this detection on the left-hand side.

13           The part that is really problematic here for them --  
14 and if I can find the exact language. We have two, quote  
15 unquote, spread-spectrum signals. This is the claim -- I  
16 think we talk about subchannels at some point here. And that  
17 is the part that is -- that doesn't quite square up with the  
18 OFDM type system. This actual element doesn't have it. That  
19 is not part of the same context that there is two signals.

20           THE COURT: Okay. Mr. Vowell, one question he has  
21 about this is where does it come from? Where are you getting  
22 this language?

23           MR. VOWELL: Specifically the language about the  
24 signals is coming directly from the standard because even as  
25 their own experts admit, the standard itself describes the

1 waveforms that are being transmitted. It describes  
2 mathematically how those waveforms are created and  
3 transmitted. And, again, since we are receiving those same  
4 waveforms they know that from the standard. We also know that  
5 the standard describes that these signals were processed using  
6 Orthogonal Frequency-Division Multiplexing, or OFDM, because  
7 of that we know that in order to receive this signal, you have  
8 to have the basic components to an OFDM receiver, including  
9 the demappers.

10           While we are here and since this is one of the  
11 issues that has been brought up a couple of times, this  
12 concept of OFDM not being a spread-spectrum technique is a red  
13 herring. I have a document sitting here that was produced by  
14 Cisco that calls OFDM and spread-spectrum technique. I can't  
15 show it to my client because they have marked it as attorneys'  
16 eyes only, but I could bring it up and show it to you and put  
17 this issue to rest. There is just no basis for them making  
18 that argument at this point and trying to put out the  
19 distinctions between OFDM and spread spectrum or trying to  
20 impute that to our claim construction -- or, excuse me, to our  
21 infringement contentions.

22           THE COURT: Well, you know, I guess again, Mr.  
23 Vowell, though, it seems as if what they are saying is they  
24 don't know -- you say this is occurring, this first one of Nss  
25 spatial streams containing this, a second one containing this,

1 but where is that found in the product?

2 MR. VOWELL: It is found in these blocks or in these  
3 chips. Again, it was Exhibit C that they attached that in  
4 order to point to it, okay, we would have to have a block  
5 diagram probably from the chipset manufacturer. But if you  
6 are going to process -- I mean it follows that if you have  
7 done this process on the transmitter and you are going to  
8 receive and actually use those incoming signals that were  
9 processed using OFDM and we know that -- and another thing we  
10 know is that these product manufacturers have had their  
11 products tested by this independent third party, Wi-Fi  
12 Alliance, to certify that they are compliant with that. And  
13 because they have passed those tests and because we know they  
14 have tested them, then we know they work this way. That  
15 particular alliance actually requires that they comply with  
16 some of the optional parts of the standard as well as just the  
17 mandatory portions.

18 THE COURT: Okay. Anything on that element or any  
19 other elements you want to point out or anybody wants to point  
20 out? Speak now or forever hold your peace.

21 MR. BURKE: One point, here again, and I am just  
22 looking at the materials -- I am happy to provide them to  
23 you -- with regard to Dr. Negus. This is a product circular  
24 that was attached to his declaration. If I can approach I can  
25 show you, Your Honor.

1 THE COURT: Okay.

2 MR. VOWELL: Sure.

3 MR. BURKE: This is a couple of pages here. If you  
4 look there, there is a system diagram at least at a high  
5 level, at a very high level. I don't want to suggest, Your  
6 Honor, that is a detailed specification. We also look --  
7 there is Wi papers that are out there. Excuse me, Mr.  
8 Vowell.

9 THE COURT: So this is a Broadcom chip sheet?

10 MR. BURKE: Chip sheet product circular. Your  
11 Honor, that was found in about 15 minutes. Once you open it  
12 up, you go to the Broadcom website, you type in the number,  
13 that pops up. If you actually go into Google, Your Honor, and  
14 you type the 802.11n in draft version, one of the first things  
15 that pops up is a Broadcom Wi paper. It is a little bit  
16 dated. It is April 2006. But it discusses the standard. It  
17 has charts, has explanations, it has consumer applications, a  
18 whole host of things. You may find it interesting that on  
19 Page 5 of that it actually lists the features that Your Honor  
20 asked about in his order. In fact, it is in almost the same  
21 order.

22 Now, again, this is somewhat dated. I am not sure  
23 how accurate it is today, but this is put out by Broadcom --  
24 not by Cisco but by Broadcom -- about the 802.11 standard and  
25 their products. I asked my secretary yesterday to print out

1 materials that were just referenced by the defendants, you  
2 know, a small amount of time. This is it. That doesn't even  
3 speak to the source code, which apparently I didn't even know  
4 this, the source code is available publicly on some of these  
5 websites that some of the defendants spelled out.

6 So I am happy to hand you all of this, but this is  
7 just the data that is on the web at all of these defendants'  
8 websites or their suppliers. So when Mr. Vowell says he can't  
9 find it or he doesn't know, I wonder how hard they've really  
10 looked.

11 THE COURT: Mr. Vowell, are you going to subpoena  
12 these chip manufacturers?

13 MR. VOWELL: Yes, Your Honor.

14 THE COURT: Okay. Well, any other elements here  
15 that anyone wants to point out so I can get a grasp on what is  
16 insufficient about the -- or what is allegedly insufficient  
17 about the contentions? Anything else from -- Mr. Burke?

18 MR. BURKE: Yeah. Yes, sir, Your Honor. One point  
19 I beg your patience here, some of the words, you know, change  
20 throughout their claims. They have this first and second  
21 spread-spectrum signal. In other cases they talk about -- I  
22 think they call it -- I am looking now at Claim 33. They call  
23 it the spread-spectrum subchannel signals. That is what is,  
24 you know, going to be different in an OFDM style system --

25 THE COURT: So tell me what it is they interchange

1 and point out where it is on the chart.

2 MR. BURKE: It is in a couple of places, Your Honor.  
3 I look here at Claim 33 of the '322 patent. And this is  
4 actually a system claim that has been represented as such. We  
5 have a plurality of spread-spectrum devices for  
6 spread-spectrum processing, a plurality of subchannels of  
7 data. Now, the reason that is important is because these are  
8 spread-spectrum-type terms, not OFDM-type terms and,  
9 therefore --

10 THE COURT: Let me stop you there. Their  
11 contentions is OFDM, spread spectrum, it doesn't matter. Now,  
12 I mean, that is just their position. What do you want me to  
13 do about that?

14 MR. BURKE: I don't think that they should just be  
15 able to say it doesn't matter and stop. I think, Your Honor,  
16 they need to explain --

17 THE COURT: Explain how an OFDM --

18 MR. BURKE: System.

19 THE COURT: Can encompass or match?

20 MR. BURKE: Step one --

21 THE COURT: Spread spectrum.

22 MR. BURKE: Spread spectrum. Your Honor, It is  
23 particularly important here this OFDM was around when Dr.  
24 Schilling filed for his patent. If you look at the particular  
25 architecture in the figures, it is all traditional

1 spread-spectrum-type architecture. It only became popular now  
2 when they started doing this OFDM in MIMO in relation to the  
3 "n" standard. In fact, you asked a question earlier I'd like  
4 to come back to. You asked about MIMO and how important it  
5 is. MIMO has kind of become in this area kind of the  
6 adjective everybody wants to say. It is like saying "Tastes  
7 great, less filling" or something. It is a slogan. It has  
8 become a popular industry term that gets thrown around a lot  
9 now and -- because of certain advantages.

10           They didn't even use the term until six years after  
11 they filed for their patent -- or eight years after. It is  
12 not in their original patent as originally filed. So it is a  
13 very important question. Unfortunately, I am not sure their  
14 patent is able to help us very much. We need to at least  
15 understand how they are applying it with respect to our  
16 products.

17           THE COURT: Okay. So that is that issue. Mr.  
18 Vowell, let me just mention, you mentioned that you have a  
19 document that says they are the same. I mean, would it be  
20 helpful to point to that document and explain how they match  
21 up.

22           MR. VOWELL: Well, the document itself doesn't go in  
23 detail and explain it. And I will point out that on this  
24 issue we sent an interrogatory to the defendants asking them  
25 to explain why they contend OFDM is not spread spectrum, and

1 they declined to answer that saying that is a matter for  
2 expert testimony, an expert opinion. And that is what -- we  
3 agree with them. And that is why -- we certainly don't think  
4 it is necessary for the preliminary infringement contentions  
5 or infringement contentions. We are happy to do that through  
6 expert reports and testimony.

7 THE COURT: All right. I interrupted you, I think.  
8 You were going to make a point about this -- you were citing  
9 the element of plurality of spread-spectrum devices.

10 MR. BURKE: Yes, sir.

11 THE COURT: And you were going to make a point that  
12 they changed their --

13 MR. BURKE: It is the --

14 THE COURT: -- terms.

15 MR. BURKE: Your Honor, if I could -- I am doing  
16 this on the fly. But we have a plurality of spread-spectrum  
17 subchannel signals. That is going to become a key issue --  
18 or could become a key issue depending upon what their  
19 contention is. Again, they haven't explained how it is that  
20 an OFDM-style system satisfies that on the right side. I  
21 mean, they talk about constellation mappers. They talk about,  
22 how, you know, it provides constellation points. I mean they  
23 haven't done the side-by-side comparison in this discussion.  
24 And, again, I don't know if this applies -- I have got to  
25 repeat myself. It goes back to this "n" standard. I don't

1 know where they are getting it from. I don't know what  
2 products. I don't know if some products work differently than  
3 other products. They haven't made an effort to find that  
4 out.

5 So we are -- the last point, Your Honor -- I'm  
6 sorry. I will stop here and let him respond if --

7 THE COURT: No, go ahead. You have something else  
8 you wanted to say?

9 MR. BURKE: Yes, sir, I do. Again, I don't know  
10 where you are going with this; but the part that has us a  
11 little bit, honestly, frightened right now is, again, a week  
12 from Friday we are supposed to swap claim terms. We have had  
13 to so far conduct all of our prior art searches, you know,  
14 collect whatever we can in terms of the documents at least in  
15 our mind not having a good understanding of what this case is  
16 all about. We have lost a lot of time in that regard.

17 We feel a little bit like we are trying to do their  
18 job for them. I don't know, again, where Your Honor is  
19 heading with this. But I don't think it is right to make the  
20 defendants go forward with a Markman construction, with a  
21 hearing, with a brief until we have the issues crystallized  
22 the parties between us as well as for Your Honor. Otherwise,  
23 I am a little afraid we are kind of feeling around here in the  
24 dark.

25 THE COURT: Well, we are going ahead with the

1 Markman Hearing January 15th. There is no doubt about that.

2 THE COURT: This case is -- there is no --  
3 absolutely no reason why an '07 case can't have a Markman  
4 Hearing in '09, so we are going forward with it. Now, we may  
5 talk about some moving of some deadlines here in a moment, but  
6 we are having the hearing on the 15th.

7 Now, Mr. Vowell did you want to say something about  
8 his specific reference of this element that talks about  
9 constellation mappers, constellation points?

10 MR. VOWELL: I would just point out, Your Honor,  
11 that some of the issues that are being raised here are really  
12 claim construction issues, what they are getting into. We  
13 don't understand how they are construing this or whatever.  
14 That will become clear through the Markman process. But we  
15 have pretty clearly laid out what the subchannels of data  
16 are. That is the multiple spatial streams, the  
17 spread-spectrum processing we have equated to what is  
18 happening with OFDM. We have given a pretty detailed  
19 recitation of how the standard describes that on the  
20 transmission side. So it is pretty clear to us we have  
21 provided probably more detail than was necessary on this  
22 particular element at least to put them on notice what we  
23 think meets that claim limitation.

24 THE COURT: All right. Does any other defendant  
25 want to point something out?

1           MR. RANGE: I have a couple of minor points, Your  
2 Honor.

3           THE COURT: All right.

4           MR. RANGE: First, with respect --

5           THE COURT: For the record, this is Mister --

6           MR. RANGE: Yeah, I'm Mr. Brian Range. I'm  
7 representing Netgear today.

8           THE COURT: All right. Go ahead.

9           MR. RANGE: I'm sorry. With respect to the things  
10 that do not satisfy the 802.11n standard but they accused as  
11 being MIMO products, they said the literature indicated to  
12 them that the products work the same way as 802.11n. I think  
13 we are entitled to know what literature they are looking at  
14 and why they think that. And really if they think -- if it is  
15 their contention that all MIMO satisfies this patent, then  
16 they should let us know that because we make a great  
17 invalidity case if that is the case. Because MIMO has existed  
18 long before their patent.

19           But if it is not all MIMO we need to know that too  
20 so we can decide where is the noninfringement arguments and so  
21 forth. This goes back to Mr. Burke's point that we are trying  
22 to litigate in the dark here.

23           Second, kind of a more overarching point is if these  
24 contentions are allowed to stand, I fear that they are going  
25 to be the model for all plaintiffs going forward. Mr. Burke

1 represents a lot of plaintiffs; and if I were him, I would  
2 say, well, it looks like I have been paying too much detail on  
3 these things. I can pretty much make a circular argument  
4 saying all the accused things satisfy the claim elements. I  
5 don't need to say particular products meet particular elements  
6 in this way, save me a lot of work, leave me a lot more  
7 flexibility down the road and let the defense litigate in the  
8 dark. I don't think it is good for the industry. That's all  
9 I have, Your Honor.

10 THE COURT: Mr. Vowell, do you want to respond to  
11 that?

12 MR. VOWELL: Just briefly, Your Honor, just to point  
13 out that I don't know what all of the references are to MIMO  
14 technology that are out there. I know that we looked at the  
15 specific ones that were involved in this case or the products  
16 in this case and looked at what the literature said with  
17 regard to those products. So that is what we relied on. I  
18 don't know what other uses of MIMO there have been, whether  
19 those are consistent with our understanding of that term, but  
20 to just say --

21 THE COURT: So you are not saying you are accusing  
22 these products because they use MIMO technology?

23 MR. VOWELL: We are saying that, but it is because  
24 they use MIMO and they use it in the way that is described in  
25 the claims.

1           THE COURT: So the patent in your mind teaches a  
2 certain configuration of MIMO technology?

3           MR. VOWELL: Yes.

4           THE COURT: And these products that you are  
5 accusing, the same thing they utilize MIMO technology in a  
6 certain configuration that is claimed in the patent?

7           MR. VOWELL: That's correct.

8           THE COURT: Any other defendant want to make any  
9 points here before we conclude?

10          All right. What I am going to do is take your  
11 arguments under advisement and look at this, and I will make  
12 my ruling hopefully very soon. And what I will do is look at  
13 your deadlines, and I may make according adjustments based on  
14 what I decide to do.

15          Again, your Markman Hearing is not going to move. I  
16 will say this, as I indicated, for this case to have been  
17 filed in '07 and y'all to have been given until January 15th  
18 '09 for a Markman Hearing, that is a lot longer than I like;  
19 and, you know, we are kind of late in the game to be  
20 addressing all these issues. You know, I don't know that,  
21 perhaps, nothing could have been done to iron this out sooner,  
22 but certainly it needs to get ironed out. We need to move  
23 forward. And you are going to have your hearing, and you are  
24 going to get on down the road in this case. It really needs  
25 to be moved along and get past these issues we are dealing

1 with here today in September when the case -- I don't know  
2 when it was filed; probably mid-2007.

3 All right. Anything further from plaintiff at this  
4 time?

5 MR. VOWELL: No, Your Honor.

6 THE COURT: Anything further from either of the  
7 defendants?

8 MR. BURKE: No, Your Honor.

9 THE COURT: All right. Thank you very much for your  
10 arguments, and we are adjourned.

11 (End of hearing.)

12

13

14 C E R T I F I C A T I O N

15

16 I certify that the foregoing is a correct transcript from the  
17 record of proceedings in the above-entitled matter.

18

19

20 /s/

21 SHEA SLOAN, CSR, RPR  
22 OFFICIAL COURT REPORTER  
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23

24

25